

**PUBLIC IMPROVEMENT CONTRACT
WITH THE CITY OF WEST LINN
FOR 2019 Pavement Repair Project**

City: City of West Linn, a municipal corporation of the State of Oregon.
Contractor: Eagle-Elsner, Inc.
PO Box 23394
Tigard, OR 97281
Term: April 1, 2019 – May 31, 2019
Compensation: Not to exceed \$100,000

RECITALS

WHEREAS, the City requires construction and related services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, time is of the essence in this contract and all work under this contract shall be completed within the time period stated in the Bid;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Services/Project

Contractor's services under this Contract shall consist of the following:

Approximately 2,200 square yards of asphalt pavement repair per the Oregon Standard Specifications for Construction; Section 00748 "3-inch Asphalt Concrete Pavement Repair." Asphalt will be level 2, 1/2 inch mix as outlined in Exhibit 1.

2. Effective Date and Duration

This Contract shall become effective upon the date of execution by the City and shall expire, unless otherwise terminated or extended, on completion of the work on **May 31, 2019**, whichever comes first. All work under this Contract shall be completed prior to the expiration of this Contract.

3. Prevailing Wage

3.1 If the contract price exceeds \$50,000 and this Contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. The prevailing wage rates in effect when this project was first advertised are hereby expressly incorporated by reference. The applicable prevailing wage rates may be accessed via the internet at: http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml. Hard copies of the prevailing wage rates publication may be obtained by contacting the Oregon Bureau of Labor and Industries via telephone at (971) 673-0839. If this Project is subject to the Davis-Bacon Act and the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the Project shall pay at least the state prevailing rate of wage as determined under ORS 279C.815.

- 3.2 The Contractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).
- 3.3 Contractor shall keep the prevailing rates of wage for Project posted in a conspicuous and accessible place in or about the Project and, if it provides a health and welfare plan or pension plan or both, shall post a notice describing the plan, including information on how and where to make claims and where to obtain further information, in a conspicuous and accessible place in or about the Project.

4. **Contract Documents**

The Contractor is hereby bound to comply with all requirements of this Contract, the Contractor's proposal, the detailed specifications and requirements, the drawings, and the special conditions and modifications in conditions as set forth in the documents prepared by the City Engineer and the performance pertaining to this contract, in the City of West Linn, Oregon, and by this reference made a part hereof to the same legal force and effect as if set forth herein in full.

5. **City's Representative**

For purposes hereof, the City's authorized representative will be Erich Lais, Assistant City Engineer, 22500 Salamo Rd. West Linn, OR 97068, 503-722-3434.

6. **Contractor's Representative**

For purpose hereof, the Contractor's authorized representative will be Jake Eagle, PO Box 23294, Tigard, OR 97281, 503-628-1137.

7. **Contractor Identification**

Contractor shall furnish to the City the Contractor's employer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

8. **Compensation**

8.1 **Payments:** City agrees to pay Contractor eighty eight thousand, three hundred twenty Dollars (\$88,320) for performance of those services provided hereunder, which payment shall be based upon the following applicable terms:

Payment shall be based upon the unit prices bid by the Contractor, as listed in attached bid. Contractor shall prepare and submit each month to the Finance Department, 22500 Salamo Road, West Linn, OR 97068, a statement of services rendered, (indicating the description of each service used in the bid and the dollar amount of each service completed through the stated date), together with a request for payment duly verified by the Contractor's Representative.

Payment by the City shall release the City from any further obligation for payment to Contractor for services performed or expenses incurred as of the date of the statement of services. Payment of installments shall not be considered acceptance or approval of any work or waiver of any defects therein. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

Contractor shall include proof of payment to any and all subcontractors and suppliers with each statement submitted to the City. The City shall retain the right to withhold payments if required proof of payment to subcontractor and suppliers is not included with a statement.

The withholding of retainage by Contractor and its subcontractors shall be in accordance with ORS 701.420.

- 8.2 Bonds:** Contractor shall provide (1) a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract and complaint with ORS 279C.380 and (2) a payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600 and complaint with ORS 279C.380.

In accordance with ORS 279C.560, unless City finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, City will approve the Contractor's written request to deposit bonds, securities or other Instruments with the City or in a custodial account or other account satisfactory to City with an approved bank or trust company, to be held instead of cash retainage for the benefit of City. In such event, City will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor. Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to City and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to: Bills, certificates, notes or bonds of the United States; Other obligations of the United States or agencies of the United States; Obligations of a corporation wholly owned by the federal government; Indebtedness of the Federal National Mortgage Association; General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon; or Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as City may require to protect its interests. When City determines that all requirements for the protection of City's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor. If City accepts a surety bond from Contractor in lieu of retainage, Contractor shall accept like bonds from its subcontractors or suppliers from which Contractor has retainage. Contractor shall then reduce the moneys Contractor holds as retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier.

- 8.3 Timing of Payments and Liquidated Damages:** Progress payments, less a five percent retainage as authorized by ORS 279C.555, shall be made to the Contractor within twenty (20) days of the City's receipt of the statement of services. The Contractor agrees that the "Time of Completion" is defined in the Bid, and agrees to complete the work by said date.

The Contractor and City agree that the City will suffer damages each day the work remains uncompleted after the Time of Completion and that the amounts of those damages are difficult to calculate. Contractor and City agree that a reasonable amount of damages for late completion is \$ 500 per calendar day and Contractor agrees to pay such amounts as liquidated damages if the work is not completed by the Time of Completion. Contractor agrees that the liquidated damages specified herein are a fair way of ascertaining damages to the City and are not a penalty for late completion.

City shall make progress payments on the Contract monthly as work progresses. Payments shall be based upon estimates of work completed that are approved by City. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. City shall pay to Contractor interest on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after receipt of the invoice from the Contractor or 15 days after the payment is approved by City, whichever is the earlier date. The rate of interest charged to City on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from Contractor or 15 days after the payment is approved by City, whichever is the earlier date, but the rate of interest may not exceed 30 percent. Interest shall be paid automatically when payments become overdue. City shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on the Contract. City will not require Contractor to petition, invoice, bill or wait additional days to receive interest due. When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, City shall so notify Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by Contractor within seven days of being notified by City, may not cause a payment to be made later than specified in this section unless interest is also paid. If requested in writing by a subcontractor, Contractor, within 10 days after receiving the request, shall send to the subcontractor a copy of that portion of any invoice, request for payment submitted to City or pay document provided by City to Contractor specifically related to any labor or materials supplied by the subcontractor. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between City and Contractor.

As work progresses, City may (but is not required) reduce the amount of the retainage and City may (but is not required) eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the Contract is completed if, in City's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, and the application shall include written approval of Contractor's surety. However, when the contract work is 97.5 percent completed, City may, at the City's sole discretion and without application by Contractor, reduce the retained amount to 100 percent of the value of the work remaining to be

done. Upon receipt of a written application by Contractor, the City shall respond in writing within a reasonable time. The retainage held by City shall be included in and paid to Contractor as part of the final payment of the contract price. City shall pay to Contractor interest at the rate of 1.5 percent per month on the final payment due Contractor, interest to commence 30 days after the work under the Contract has been completed and accepted and to run until the date when the final payment is tendered to Contractor. Contractor shall notify City in writing when the contractor considers the work complete and City shall, within 15 days after receiving the written notice, either accept the work or notify Contractor of work yet to be performed on the Contract. If City does not, within the time allowed, notify Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

- 8.4 Final Payment:** The Contractor shall notify the City in writing when the Contractor considers the Project complete, and the City shall, within 15 days after receiving the written notice, either accept the work or notify the Contractor of work yet to be performed on the contract.

If accepted by the City, the remaining balance due to the Contractor, including the retained percentage, shall be paid to the Contractor by the City within 30 days after the date of said acceptance.

The City shall pay to the Contractor interest at the rate of one and one-half percent per month on the final payment due the Contractor, to commence 30 days after the work under the Contract has been completed and accepted and to run until the date when final payment is tendered to the Contractor. If the City does not, within 15 days after receiving written notice of completion, notify the Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

As a further condition of final acceptance, the City may require the Contractor to submit evidence, satisfactory to the City's Representative, that all payrolls, material bills, and other indebtedness connected with the Project have been paid. If any indebtedness or liens are in dispute, the Contractor may submit a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts if such payment has not already been guaranteed by surety bond.

9. Status of Contractor as Independent Contractor

Contractor certifies that:

- 9.1** Contractor acknowledges that for all purposes related to this Contract, Contractor is and shall be deemed to be an independent Contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset

compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Contract, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

- 9.2 The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.
- 9.3 If this payment is to be charged against Federal funds, Contractor certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.
- 9.4 Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- 9.5 Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Contract.
- 9.6 Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

10. **Subcontracts – Assignment, Delegation & Required Terms**

- 10.1 Contractor shall submit a list of Subcontractors for approval by the City, and Contractor shall be fully responsible for the acts or omissions of any Subcontractors and of all persons employed by them, and neither the approval by City of any Subcontractor nor anything contained herein shall be deemed to create any contractual relation between the Subcontractor and City.

This Contract and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon the City and the Contractor respectively and their legal representatives. Contractor shall not assign any rights nor delegate any duties incurred by this contract, or any part hereof without the written consent of City, and any assignment or delegation in violation hereof shall be void.

- 10.2 Contractor shall include in each subcontract for property or services the contractor enters into with a subcontractor, including a material supplier, for the purpose of performing a construction contract:

- 10.2.1 A payment clause that obligates Contractor to pay subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the City pays to Contractor under the Contract;

- 10.2.2** A clause that requires Contractor to provide subcontractor with a standard form that the subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor;
- 10.2.3** A clause that requires Contractor, except as otherwise provided in this subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor: (i) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and (ii) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
- 10.2.4** An interest penalty clause that obligates Contractor, if the Contractor does not pay the subcontractor within 30 days after receiving payment from City, to pay subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under Section 10.2.1 of this subsection. Contractor or subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or subcontractor did not make payment when payment was due is that Contractor or subcontractor did not receive payment from City or Contractor when payment was due. The interest penalty: (i) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and (ii) Is computed at the rate specified in ORS 279C.515 (2).
- 10.3** Contractor shall, in each of the Contractor's subcontracts, require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection 10.2.4 of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.
- 10.4** Contractor certifies that it has not and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

11. Contractor - Payment of Benefits - Hours of Work

11.1 The Contractor shall:

- 11.1.1** Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the work provided for in this contract;
- 11.1.2** Pay all contributions or amounts due the Industrial Accident Fund under the Worker's Compensation Law from such Contractor or Subcontractor incurred in the performance of this contract;
- 11.1.3** Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167;
- 11.1.4** Not permit any lien or claim to be filed or prosecuted against the City of West Linn on account of any labor or material furnished; and
- 11.1.5** Promptly pay all sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the Contract.

11.2 If the contract price exceeds \$50,000 and this Contract is not otherwise exempt, the Contractor or the Contractor's Surety and every Subcontractor or the Subcontractor's Surety shall file certified statements with the City in writing on a form prescribed by the Commissioner of the Bureau of Labor and Industries. These statements shall certify the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed upon such public work, and further certify that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract. Certifications submitted shall comply with applicable law.

- 11.2.1** The certified statements shall set out accurately and completely the payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, and the gross wages the worker earned during each week identified in the certified statement.
- 11.2.2** Each certified statement required herein shall be delivered or mailed by the Contractor or Subcontractor to the City. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as set forth in OS 279C.845.
- 11.2.3** City shall retain 25 percent of any amount earned by Contractor until the certified statements as required by this section have been filed. City shall pay Contractor the amount retained under this subsection within 14 days after Contractor files the certified statements as required by this section, regardless of whether a

subcontractor has failed to file certified statements as required by this section. City is not required to verify the truth of the contents of certified statements filed by Contractor.

- 11.3 The Contractor agrees that if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this contract as such claim becomes due, the proper office of the City of West Linn may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of such contract. Payment of a claim in this manner shall not relieve the Contractor or the Contractor's Surety from obligation with respect to any unpaid claims.
- 11.4 If the Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract within 30 days after receiving payment from City, Contractor or its subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- 11.5 If Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 11.6 Contractor shall give notice in writing to employees who work on work covered by the Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- 11.7 Contractor agrees that no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or when public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the workweek is five consecutive days, Monday through Friday, or ten (10) hours in any one day and or forty (40) hours in any one week when the workweek is four consecutive days, Monday through Friday and for all work performed on Saturday and on any legal holiday as specified in ORS 279C.540.

No City employee shall be required to work overtime or on a Saturday, Sunday or holiday in the fulfillment of this contract except where the Contractor agrees to reimburse the City in the amount of money paid the employee for such work as determined by state law, the City's personnel rules or union agreement. The Contractor shall require every Subcontractor to comply with this requirement.

11.8 Contractor shall comply with ORS 656.017 unless exempt under ORS 656.126.

12. **Drug Testing Program**

ORS 279C.505 requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. The Contractor demonstrates that a drug-testing program is in place by signing of the contract. The drug testing program will apply to all employees and will be maintained for the duration of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

13. **Contractor's Employee Medical Payments**

Contractor agrees to pay promptly as due, to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Contractor's employees, of all sums which the Contractor agreed to pay for such services and all money and sums which the Contractor collected or deducted from employee wages pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

14. **Salvage, Composting or Mulching**

If this is a contract for demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this is a contract for lawn and landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

15. **Early Termination**

15.1 This Contract may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons:

15.1.1 If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or

15.1.2 If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

15.2 Payment of Contractor shall be as provided by ORS 279C.660 and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Contractor against City under this Contract. In no circumstance shall profit or overhead on unperformed work be due to Contractor.

15.3 Termination under any provision of this Section 15 shall not affect any right, obligation, or liability of Contractor or City which accrued prior to such termination.

16. **Termination with Cause**

16.1 City may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 16.1.1 If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Contract may be modified to accommodate a reduction in funds,
 - 16.1.2 If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract,
 - 16.1.3 If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Contract is for any reason denied, revoked, or not renewed, or
 - 16.1.4 If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.
 - 16.1.5 If Contractor fails to maintain reasonable relations with the public. Verbal abuse, threats, or other inappropriate behavior towards members of the public constitutes grounds for termination.
 - 16.1.6 Any such termination of this Contract under subsection 16.1 shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- 16.2 City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Contract:
- 16.2.1 If Contractor fails to provide services called for by this Contract within the time specified herein or any extension thereof, or
 - 16.2.2 If Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
 - 16.2.3 The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
 - 16.2.4 If City terminates this Contract under subsection 16.2, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Contract as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall

be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal. No payment shall be due to Contractor until City's damages are fully complete and calculated. If the amount of damage owed to the City is more than the amount owed to Contractor, Contractor shall tender the balance owed to City upon demand.

16.2.5 Any wrongful exercise of a termination for cause shall be converted to a termination without cause and Contractor's remedy shall be as limited therein

17. **Access to Records**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts.

18. **Work is Property of City**

All work performed by Contractor under this Contract shall be the property of the City.

19. **Adherence to Law**

19.1 Contractor shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning workers' compensation, and minimum and prevailing wage requirements. Specifically but not by way of limitation, this contract is subject to all applicable provisions of ORS 279C.505, 279C.510, 279C. 515, 279C.520, 279C.525, 279C.530, 279C.540, 279C.570, 279C.580 and 279C.800 - 279C.870.

19.2 To the extent applicable, the Contractor represents that it will comply with Executive Order 11246 as amended, Executive Order 11141, Section 503 of the Vocational Rehabilitation Act of 1973 as amended and the Age Discrimination Act of 1975, and all rules and regulations issued pursuant to the Acts.

19.3 As provided by ORS 279C.525, all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under this contract are by reference incorporated herein to the same force and affect as if set forth herein in full. If the Contractor must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the City shall issue a Change Order setting forth the additional work that must be undertaken. The Change Order shall not invalidate the Contract and there shall be, in addition to a reasonable extension, if necessary, of the contract time, a reasonable adjustment in the contract price, if necessary, to compensate the Contractor for all costs and expenses incurred, including overhead and profits, as a result of the delay or additional work.

19.4 Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.

- 19.5 If Contractor is a foreign contractor as defined in ORS 279A.120, Contractor shall comply with that section and the City must satisfy itself that the requirements of ORS 279A.120 have been complied with by Contractor before City issues final payment under this Contract.
- 19.6 Any other condition or clause required by law to be in this Contract shall be considered included by this reference. In the event of conflict, these required conditions and clauses control over any contrary or different conditions or terms of this Contract

20. Changes

City may at any time, and without notice, issue a written Change Order requiring additional work within the general scope of this Contract, or any amendment thereto, or directing the omission of or variation in work. If such Change Order results in a material change in the amount or character of the work, an equitable adjustment in the Contract price and other provisions of this Contract as may be affected may be made. Any claim by Contractor for and adjustment under this section shall be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of change or the claim will not be allowed. Whether made pursuant to this section or by mutual agreement, no change shall be binding upon City until a Change Order is executed by the Authorized Representative of City, which expressly states that it constitutes a Change Order to this Contract. The issuance of information, advice, approvals, or instructions by City's Representative or other City personnel shall not constitute an authorized change pursuant to this section. Nothing contained in this section shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the Contract, as changed.

21. Force Majeure

Neither City nor Contractor shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled, including, but not restricted to, an act of God or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of Subcontractor or suppliers due to such cause; provided that the party so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under Contract.

22. Nonwaiver

The failure of the City to insist upon or enforce strict performance by Contractor of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

23. Warranties

All work shall be guaranteed by the Contractor for a period of 18 months after the date of final acceptance of the work by the City. Contractor warrants that all practices and procedures,

workmanship, and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this contract.

24. **Attorney's Fees**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

25. **Governing Law**

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Contract must be brought in the Circuit Court of Clackamas County or the U. S. District Court in Portland.

26. **Conflict Between Terms**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of the Contractor, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

27. **Indemnification**

Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

28. **Insurance**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of Insurance maintained by the Contractor and its subcontractors shall provide at least the following limits and coverages:

28.1 Commercial General Liability Insurance: Contractor and its subcontractors shall obtain, at contractor's or subcontractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance including all Liability including all major divisions of coverage, including, but not limited to, Premises/Operations, Completed Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability (including coverage for the Contractor's indemnity obligations and other contractual indemnity obligations assumed by the Contractor), Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground Hazards). The following insurance will be carried:

Employer's Liability Insurance

\$ 2,000,000 Each Occurrence

\$ 2,000,000 Disease Each Employee

\$ 2,000,000 Disease – Policy

Commercial General Liability insurance

\$ 2,000,000 Each Occurrence Limit

\$ 3,000,000 General Aggregate

\$ 3,000,000 Products/Completed Operations Aggregate

\$ 3,000,000 Personal and Advertising Injury

\$ 2,000,000 Limited Job Site Pollution Occurrence Sub-Limit

Comprehensive Automobile Liability Insurance including coverage for all owned, hired and non-owned vehicles

\$ 2,000,000 Each Occurrence Combined Single Limit

\$ 3,000,000 Aggregate Bodily Injury & Property Damage

or

\$ 2,000,000 Each Person Bodily Injury

\$ 2,000,000 Each Occurrence Bodily Injury

\$ 2,000,000 Each Occurrence Property Damage

\$ 2,000,000 Each Occurrence Pollution Occurrence Sub-Limit

"All risk" Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and control of the contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the full amount of the contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include City, the

contractor and its sub-contractors as their interests may appear and may not be cancelled or terminated until such time as City's final acceptance of the Project.

The policy shall be endorsed to have the General Aggregate apply to this Project Only.

- 28.2 **Additional Insured Provision:** The City of West Linn, Oregon, its officers, directors, and employees shall be added as additional insureds with respect to this contract. All Liability Insurance policies will be endorsed to show this additional coverage.
- 28.3 **Insurance Carrier Rating:** Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 28.4 **Certificates of Insurance:** As evidence of the insurance coverage required by the contract, the contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 30 days prior to coverage expiration.
- Certificates of Insurance should read "Insurance certificate pertaining to contract for 2019 Pavement Repair Project. The City of West Linn, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.
- 28.5 **Primary Coverage Clarification:** All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.
- 28.6 **Cross-Liability Clause:** A cross-liability clause or separation of insureds clause will be included in general liability policy.
- 28.7 **Cancellation/Other:** Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Morgan Coffie, Management Analyst
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Ph: 503- 722-3431
Fax: 503- 742-8652
Email: mcoffie@westlinnoregon.gov

Such policies or certificates must be delivered prior to commencement of the work. Thirty days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

29. **Method and Place of Giving Notice, Submitting Bills and Making Payments**

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

City of West Linn	Contractor
Attn: Finance Department	Attn: Jake Eagle
22500 Salamo Road	Address: PO Box 23294
West Linn, OR 97068	Tigard, OR 97281
Phone: 503-657-0331	Phone: 503-628-1137
Fax: 503-650-9041	Fax: NA
Email: acctspayable@westlinnoregon.gov	Email: jake@eagle-elsner.com

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this section.

30. **Hazardous Materials**

Contractor shall supply City with a list of any and all hazardous substances used in performance of this Contract. That list shall identify the location of storage and use of all such hazardous substances and identify the amounts stored and used at each location. Contractor shall provide City with material safety data sheets for all hazardous substances brought onto City property, created on City property, or delivered to City pursuant to this Contract. For the purpose of this section, "hazardous substance" means hazardous substance as defined by ORS 453.307(5). Contractor shall complete the State Fire Marshall's hazardous substance survey as required by ORS 453.317 and shall assist City to complete any such survey that it may be required to complete because of substances used in the performance of this Contract.

31. **Hazardous Waste**

If, as a result of performance of this Contract, Contractor generates any hazardous waste, Contractor shall be responsible for disposal of any such hazardous waste in compliance with all applicable federal and state requirements. Contractors shall provide City with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous waste. Contractor shall defend, indemnify, and hold harmless City for any disposal or storage of hazardous waste generated pursuant to this Contract and any releases or discharges of hazardous materials.

32. Severability

In the event any provision or portion of this Contract is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect and shall in no way be affected or invalidated thereby.

33. Complete Contract

This Contract and attached exhibits constitutes the entire Contract between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Contract, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the City has caused this Contract to be executed by its duly authorized undersigned officer and the Contractor has executed this Contract on the date herein above first written.

CONTRACTOR

Richard Eagle, Pres
Signature

Richard Eagle, President
Printed Name & Title

03-20-19
Date

CITY OF WEST LINN

Eileen Stein
Signature

Eileen Stein, City Manager
Printed Name & Title

4-3-19
Date

APPROVED AS TO FORM:

[Signature]
LEGAL

